Filed 10/27/09 In re A.R. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.R., a Person Coming Under the Juvenile Court Law.	B211244 (Los Angeles County Super. Ct. No. TJ17131)
THE PEOPLE, Plaintiff and Respondent, v. A.R., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Catherine J. Pratt, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part and remanded.

Courtney Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Kenneth C. Byrne and David Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

Minor and appellant A.R. was placed home on probation after the juvenile court sustained a petition declaring him a ward of the court under Welfare and Institutions Code section 602, based on a finding that appellant was in possession of metal knuckles in violation of Penal Code section 12020, subdivision (a)(1).[1] In his timely appeal, appellant contends as follows: (1) the evidence was insufficient to support the charge of possession of metal knuckles; (2) the trial court failed to expressly declare whether the offense was a felony or misdemeanor; and (3) the maximum period of confinement of three years, reflected in the minute order, must be stricken because (a) the juvenile court did not have the authority to set a maximum as appellant was placed home on probation and (b) the minute order does not reflect the oral pronouncement of judgment. We reject the sufficiency of the evidence argument and affirm the wardship order, but remand to the trial court to correct the errors in appellant's second and third contentions.

FACTS

Officer Raymond Garcia, a school police officer for the Compton Unified School District, saw appellant at 8:45 a.m. on December 7, 2007, near Compton High School. Truancy takes effect in the City of Compton at 8:15 a.m. Appellant identified himself and said he attended Compton High School. He was about 200-300 feet from the school entrance.

Officer Garcia took appellant into custody, intending to transport him to the truancy center. Before placing appellant in the patrol car, Officer Garcia conducted a cursory search for weapons. After feeling an unusual object in appellant's waistband, the officer lifted appellant's shirt and observed brass knuckles used as a belt buckle. Appellant was placed under arrest for violating section 12020, subdivision (a)(1).

The seized item was received into evidence at trial. Officer Garcia was asked to show the juvenile court how the object could be used. The court described it as follows:

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[1] All further references are to the Penal Code, unless otherwise indicated.

"So he has them on his right hand with his four fingers through the holes, and they come just above his first knuckle. And by that I mean closest to the base of his hand, about one inch from the joint between his hand and his finger." The officer said the item could be used as a striking device to "easily break a bone, a person's nose, jaw. He could cause serious bodily injury." Officer Garcia described the item as made of a type of metal, rather than any other material.

Appellant testified that he was 10-15 feet from the school entrance when detained. The belt buckle was a gift. It came with a latch so it could be attached to a belt. He had it for two years and never used it for anything but a belt buckle. He thought it was a crown, not brass knuckles, although he knew what brass knuckles were and how they can be used as a weapon.

DISCUSSION

I

SUFFICIENCY OF THE EVIDENCE

Appellant makes two specific challenges to the sufficiency of the evidence. First, he contends the object in dispute is not metal knuckles, but instead is a belt buckle. Second, he argues even if the object were metal knuckles, appellant was unaware of that fact as he received the object as a gift and never considered it to be anything but a belt buckle. Appellant is incorrect.

"The same standard governs review of the sufficiency of evidence in adult criminal cases and juvenile cases: we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138; *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.)" (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.)

Section 12020 provides in relevant part as follows: "(a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not

exceeding one year or in the state prison: [¶] (1) . . . possesses . . . any metal knuckles . . . ." The Legislature has defined metal knuckles to include "any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow." (§ 12020, subd. (c)(7).)

The offenses defined by section 12020, subdivision (a)(1), are general intent crimes. (See *People v. Rubalcava* (2000) 23 Cal.4th 322, 328.) "[T]he definition of metal knuckles focuses on their physical characteristics without reference to the possessor's 'intent to do a further act or achieve a future consequence.' [Citations.]" (*In re Martin Alonzo L.* (2006) 142 Cal.App.4th 93, 96.) Use of the metal knuckles is not an element of the crime, and the prosecution need not present evidence of an intent to use the object in a violent manner. (*Ibid.*; *People v. Gaitan* (2001) 92 Cal.App.4th 540, 545.)

We have examined the object in dispute in this case and hold that the juvenile court properly determined it to fall within the definition of metal knuckles. The object is made entirely of metal. Across the top are four holes, through which one's fingers easily fit up to the middle knuckles and which would support the hand or fist. There is a raised projection above each of the four holes in the object, which have the potential to increase the damage from a blow struck with the item.

There is no merit to appellant's further argument the evidence is insufficient because the object has a clasp to attach to a belt, and he thought it was a belt buckle and not a weapon. As discussed above, the object satisfies the statutory definition of metal knuckles. Appellant was aware he possessed the item. Appellant testified he knew what "brass knuckles" were and how they could be used as a weapon. Nothing more is required to establish a violation of section 12020, subdivision (a)(1). (See *People v. Rubalcava, supra,* 23 Cal.4th at p. 332; *In re Martin Alonzo L., supra,* 142 Cal.App.4th at pp. 96-97; *People v. Gaitan, supra,* 92 Cal.App.4th at p. 547.)

II

FAILURE TO COMPLY WITH WELFARE AND INSTITUTIONS CODE SECTION 702

Appellant next argues the juvenile court failed to orally declare whether the possession of metal knuckles offense in this case is a felony or misdemeanor, as required by Welfare and Institutions Code section 702. The Attorney General properly concedes the error.

Section 12020, subdivision (a)(1), provides in the alternative for punishment as either a felony or misdemeanor. Welfare and Institutions Code section 702 provides in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony." "[F]ailure to make the mandatory express declaration requires remand of [the] matter for strict compliance with Welfare and Institutions Code section 702." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) In accordance with section 702, as interpreted in *In re Manzy W.*, we remand the cause to allow the juvenile court to declare if the offense is a felony or misdemeanor.

III

SETTING THE MAXIMUM PERIOD OF CONFINEMENT

In his final contention, appellant argues the minute order from the disposition hearing setting his maximum period of confinement at three years must be corrected for two reasons. First, the juvenile court never orally imposed the three-year period. Second, the juvenile court was without jurisdiction to do so because appellant was not removed from the custody of his parents. We agree.

Welfare and Institutions Code section 726, subdivision (c) provides in part as follows: "If the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order

shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." Where a minor is placed home on probation and not removed from his parents' custody, the juvenile court lacks the authority to set the maximum period of confinement. (*In re Matthew A., supra,* 165 Cal.App.4th at p. 541.)

The minute order suffers from two defects. First, the juvenile court never orally set the maximum period of confinement at three years, and to the extent the minute order conflicts with the court's oral pronouncement of judgment, it cannot stand. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) Second, the court did not remove appellant from his parents' custody, and as a result, the court lacked the authority to set a maximum period of confinement.

DISPOSITION

The minute order dated August 14, 2008, is ordered corrected as follows: (1) the notation that the offense is declared a felony is stricken; and (2) the maximum period of confinement of three years is stricken. The cause is remanded to the juvenile court for an express declaration as to whether the violation of Penal Code section 12022, subdivision (a)(1), is a felony or misdemeanor. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J. MOSK, J.